

**OPINION
77-42**

August 11, 1977 (OPINION)

Mr. Wilbur Boldt
Deputy Commissioner
North Dakota Game and Fish Department
Bismarck, ND 58505

Dear Mr. Boldt:

This is in response to your letter of August 8, 1977, wherein you request an opinion of this office relative to prohibitions contained in Section 20.1-04-02 of the North Dakota Century Code, as amended, as the same relates to a possible permit proposed to be issued by your department for the purpose of using the plumage of game birds for various and sundry purposes. You submit the following in your letter of inquiry:

Your opinion will be appreciated on question whether the Game and Fish Commissioner can legally issue a permit to a person for the purpose of using the plumage of game birds to make feather pictures, plaques etc. for sale or barter.

We have searched title 20 of the N.D.C.C. and it seems that the provisions of section 20.1-01-02 subsections 6, 11 and 17 along with section 20.1-04-02 would prohibit such sale or barter.

As you have noted in your letter of inquiry, Section 20.1-01-02 of the North Dakota Century Code, as amended, defines "any part thereof," in subsection 17 as follows:

"Any part thereof" and "parts thereof" shall include the hide, horns, or hoofs of any animal specified, and the plumage, skin, and every other part of any bird specified. (Emphasis supplied)

Noting also, the provisions of Section 20.1-04-02, of the North Dakota Century Code, as amended, relative to the prohibitions therein contained and its stated application to "any game bird or any part thereof," it is clear that "plumage" is contemplated in the statute containing the prohibitions. The prohibitions are set forth in said Section 20.1-04-02, North Dakota Century Code, as follows:

20.1-04-02. GAME BIRDS PROTECTED. No person shall hunt, take, kill, possess, convey, ship, or cause to be shipped, by common or private carrier, sell, or barter any game bird or any part thereof taken in this state, except as provided in this title. (Emphasis supplied)

In searching Title 20.1 of the North Dakota Century Code, as amended, we are also unable to find any provision which contemplates a permit or licensure for the proposed purposes. Clearly the proposed use is covered and contemplated by the statute which prohibits the sale or barter of any game bird or any part thereof. Accordingly, in view of the direct prohibition, we fail to see any source from which the

commissioner may draw authority to issue such permit or license.

We are therefore of the opinion that the described and proposed activity is prohibited by statute and that the commissioner is without authority to issue a permit for such purposes.

We trust that the foregoing general observations, comments and expressions will adequately set forth our opinion upon the matters presented.

Sincerely,

ALLEN I. OLSON

Attorney General